***THE HON'BLE SRI JUSTICE BILAL NAZKI**

AND

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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+WRIT PETITION NO. 10560 OF 1997

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% 14-07-2004

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Between:

K. Venugopala Rao S/o. Sri. K. Nagbhushanam
Transport Business, R/o. Miryalaguda in Nalgonda
District.

..... PETITIONER

AND

1 The Regional Transport Officer,
Nalgonda, Nalgonda District.
2 The Motor Vehicle Inspector (Vigilance & Enforcement)
State Transport Authority, A.P. Burgula Ramakrishna Rao Buildings,
Tank Bund Road, Hyderabad.

.....RESPONDENTS

For the Petitioner:MR.T.VENKATA RAMANA

For the Respondent No.: SPL GP FOR TAXES

The Court Made the Following :

! FOR PETITIONER : MR.T.VENKATA RAMANA.

^ FOR RESPONDENTS : SPL GP FOR TAXES.

< Gist:

> Head Note:

? CITATIONS:

1. 1980 ALT REPORTS 414.
2. 1988(2) ALT 861.

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 10560 of 1997

Between:

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Transport Business, R/o. Miryalaguda in Nalgonda
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State Transport Authority, A.P. Burgula Ramakrishna Rao Buildings,
Tank Bund Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of order or direction particularly one in the nature of writ of Certiorari, by calling for the records from the file of the 1st respondent in R.No.6404/A2/96 and quash his demand notice dt. 25.2.1997, demanding a sum of Rs. 61,250/- as tax and a further sum of Rs. 61,250/- as penalty from the petitioner for the quarters ending 31.3.1996 and 30.6.1996 in respect of his bus A.P.24/T.5544 and to grant such other relief or relieves as this Hon'ble Court may deem fit and just.

For the Petitioner:MR.T.VENKATA RAMANA

For the Respondent No.: SPL GP FOR TAXES

The Court Made the Following :

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 10560 of 1997

ORDER : (Per Sri Bilal Nazki, J).

This writ petition has been filed for quashing the demand notice dated 25.02.1997, creating a demand for Rs.61,250/- as tax and another Rs.61,250/- as penalty for two quarters in between 31.03.1996 and 30.06.1996.

Heard learned Counsel for the parties and perused the record. During the hearing, the learned Counsel for petitioner confined his attack only to the tax and penalty imposed with respect to period from 01.01.1996 to 31.03.1996. He submits that the vehicle in question was hired by Andhra Pradesh State Road Transport Corporation (APSRTC) till 12.02.1996 and was covered by a stage carriage permit and from 13.02.1996 till the end of the quarter ending with 31.03.1996, there was neither permit nor a fitness certificate, therefore he was not liable to pay any tax, because the vehicle had to be deemed as not in use in terms of second Proviso to Rule 12-A of A.P.Motor Vehicles Taxation Rules, 1963.

In the light of the arguments made by the learned Counsel for the petitioner, it is only the second proviso to Rule 12-A, which is sought to be interpreted by this Court. Rule 12-A of A.P.Motor Vehicles Taxation Rules, 1963 lays down;

> *"**12-A Liability for payment of tax in respect of motor vehicles kept for use :-** [For the purpose of Section 3 of the Act, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control of the motor vehicle intimates in writing to the licensing officer before the commencement of the quarter for which tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid. The Licensing Officer shall, on receipt of the intimation, acknowledge its receipt]:*
>
> *Provided that in the case of non-transport vehicles, if the owner of the vehicle fails to submit the stoppage report within the period specified above but subsequently gives an affidavit with full details to the effect that the vehicle was not in existence or that it was already disposed of to another person and that he is no more in possession of it, or that the tax in respect of the vehicle was paid elsewhere in the same State or in some other State and as such he is not liable for payment of tax in the jurisdiction of that*

Licensing Officer or proves to the satisfaction of the Licensing Officer that the vehicle has not been used, it may be deemed that the vehicle has not been kept for use:

[Provided further that nothing in this rule shall apply in respect of vehicles for which life time or lumpsum tax is prescribed.]

Provided further that in the case of transport vehicle, if the vehicle is not covered by a valid fitness certificate or a valid permit, it may be deemed that the vehicle is not kept for use as a transport vehicle and is not taxable as such.

[Provided also that in the case of public carrier vehicles registered and normally kept in any one of the State of Madras, Mysore, Kerala, and Maharashtra and covered by permits to ply in this State without counter-signature under the rules framed under Section 68(2)(hh) of the Motor Vehicles Act, 1939(Central Act 4 of 1939) in pursuance of the special reciprocal agreement entered into between the States of Andhra Pradesh, Madras, Maharastra, Mysore & Kerala, the vehicle shall be deemed to have been kept for use till the expiry of their permits irrespective of this rule, unless the vehicles are kept under non-use after the prior intimation for a period of whole year in any State or States.]"

On the face of it, the argument looks to be absurd because, if we hold that if there is a vehicle which is not covered by a valid fitness certificate or a valid permit, it has to be deemed that the vehicle is not kept for use as a transport vehicle and is not taxable as such, it would be a license for people to ply vehicles without fitness certificate and without valid permits.

The learned Counsel for petitioner relies on judgments of this Court. One of the judgments is a note and the full judgment has not been produced. This notes is reproduced hereunder;

"A.P.Motor Vehicles Taxation Rules, 1963:-- *Rule 12-A-Vehicle not covered by a valid permit for a month -- not taxable -- Refund of Tax paid for that month should be given.*

Held:-- *The Second Proviso to Rule 12-A says that in the case of a transport vehicle if the vehicle is not covered by a valid fitness certificate or a valid permit, it may be deemed that the vehicle is not kept for use as a transport vehicle and is not taxable as such. Admittedly in this case the petitioner has no valid permit for the month of June, 1977 to run the vehicle. Therefore, in the view of that provision, it must be deemed that the vehicle was not kept for use as a transport vehicle and was not taxable as such. Therefore the petitioner is not entitled for refund of the tax for the month of June, 1977."*

In the absence of the facts and in the absence of any discussion which might have been made by the Judge in that judgment, it is difficult for us to make out anything out of this judgment.

Counsel for petitioner also relied on a judgment of this Court in *The District Manager, A.P.S.R.T.C., Allagadda Vs. Regional Transport Officer, Kurnool and another.* This judgment has not at all dealt with Rule 12-A.

The other judgment on which reliance is placed by Counsel for petitioner is a Division Bench judgment of this Court in *G.R.Krishnappa Vs. Regional Transport Officer, Kurnool.* While interpreting Second proviso of Rule 12-A, this Court held ;

"The second limb of the argument on this question relates to the interpretation to the second proviso to Rule 12-A. It is urged that when the vehicle is not covered valid fitness certificate or valid permit it must be deemed to be a vehicle not kept for use. This interpretation placed by the learned counsel on this proviso cannot be accepted. In our view the proviso raises a presumption in respect of the non-user of the vehicle. But if the vehicle is found using a public place in the State of Andhra Pradesh, the presumption has no application. If not it is placing a premium on the vehicle using a public place without a valid permit or without a valid fitness certificate. This interpretation is accepted by a Division Bench of this Court in W.A.No.97 of 1971 dated 23-11-1971 which is approved by the Full Bench. We see no valid reason to reopen this question again either in principle or on authority, and hence we hold that the second proviso to Rule 12-A is not attracted when the vehicle is found using a public place in this State."

Now, in the light of these judgments, let us examine Rule 12-A. This Rule is made under the caption of, “Liability for payment of tax in respect of motor vehicles kept for use” and creates a presumption that a motor vehicle shall be deemed to be kept for use and would be liable to tax unless and until the person having possession or control of the vehicle intimates in writing to the licensing officer before the commencement of the quarter for which the tax is due, that the vehicle shall not be used after expiry of the period for which the tax has been paid. So, the presumption created under Rule 12-A is that, a motor vehicle shall be deemed to be kept for use and would be liable to pay tax unless a notice in writing is given before the commencement of the quarter for which the tax is not paid and the second proviso further clarifies that the vehicle not covered by valid fitness certificate or valid permit would be presumed to have been kept out of use and would not be taxable. Unless and until an intimation is given as required under Rule 12-A, the second proviso of Rule 12-A would not come into operation. Rule 12-A has to be read along with Section 3 of The Andhra Pradesh Motor Vehicles Taxation Act, 1963, which lays down that the Government may, by notification from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use. Even otherwise, the requirement under second proviso to Rule 12-A is that the vehicle should be without valid fitness certificate and valid permit. But the petitioner himself in his reply to the show cause notice, has stated that although he had no valid permit beyond 31.03.1996, but valid fitness certificate was there which was effective till 30.07.1996 and insurance certificate was valid upto 28.09.1996.

In addition to it, it has been stated in the impugned order that this vehicle was in use on 15.6.1996 when it was intercepted by the Motor Vehicles Inspector. He even found that the vehicle was being plied with a fake Registration Number. The Registration number belonged to some other vehicle for which the tax had been paid. This fact is not disputed.

For these reasons, we do not find merit in this Writ Petition, which is accordingly dismissed. No costs.

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(BILAL NAZKI, J)

14th July, 2004.

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(P.S.NARAYANA,J)

NB: L.R.Copies to be marked.

(B/o)

ajr.

One Fair Copy to the Hon'ble Mr.Justice Bilal Nazki [For his Lordship's kind perusal]

One Fair Copy to the Hon'ble Mr.Justice P.S.Narayana [For his Lordship's kind perusal]

To

1 The Regional Transport Officer, Nalgonda, Nalgonda District.
2 The Motor Vehicle Inspector (Vigilance & Enforcement)
State Transport Authority, A.P. Burgula Ramakrishna Rao Buildings,
Tank Bund Road, Hyderabad.

3 Two C.Cs. to the Special Government Pleader for Taxes, High Court

buildings, Hyderabad (O.U.T)

4 (8) L.R.Copies.

5 The Under Secretary, Union of India, Ministry of Law, Justice and

Company affairs, New Delhi.

6 The Secretary, A.P. Advocates Association Library, High Court

Buildings, Hyderabad.

7 Two C.D. copies.